Appendix A — Judgment of the Superior Court of Puerto Rico

(Translation)

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN DIVISION

PUERTO RICO PORT AUTHORITY DEFENDANT — APPELLANT VS. HERMANDAD DE EMPLEADOS DE OFICINA COMERCIO Y RAMAS ANEXAS (HEO) (BROTHERHOOD OF OFFICE AND COMMERCIAL WORKERS AND AFFILIATED BRANCHES) AND UNION DE EMPLEADOS DE TRANSPORTE DE CATAÑO (UETC) (CATAÑO TRANSPORTATION WORKERS UNION) PLAINTIFFS — APPELLEES	CIVIL NO.: KAC 93-0116 (901) RE: JUDICIAL REVIEW OF LABOR-MANAGEMENT ARBITRATION AWARD (HON. PEDRO SANTOS, ARBITRATOR; CONCILIATION AND ARBITRATION BUREAU OF THE LABOR DEPT.)

JUDGMENT

The complaint of the Puerto Rico Port Authority is denied, challenging that part of a labor-management arbitration award that decided that the penalty of double pay for the days of annual leave accrued in excess of the maximum days authorized to be accrued, as provided by Mandatory Decree No. 38 of 1989 (8th Review) with effect from July 6, 1989, applies also to the annual leave already accrued up to that date and not merely to the annual leave to be accrued after that date, as sustained by the Authority.

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Mandatory Decree No. 38, applicable to the Transportation Industry in its sixth review of 1974 and seventh of 1983, provided in an identical manner regarding the right to annual leave: one and one fourth (1 1/4) days per month, which, according to a written agreement between employer and employee, may be accrued for over a year but never for more than two. Nothing was provided in the event that the employer did not grant his employees the annual leave that they were entitled to after having accrued the maximum for the two years. The eighth review of the Decree, effective July 6, 1989, introduced changes in the section regarding annual leave by providing them at the rate of one and five twelfths (1 5/12) of a working day per month (17 working days per year). It provided, as before, that they could be accrued for over a year but never for more than two, and added the following:

> The employer who does not grant any of his employees the annual leave to which they are entitled after having accrued them for two (2) years, shall grant them the total amount accrued up to that time, paying them two (2) times the corresponding salary for the period in excess of said two years.

When the controversy between the parties arose, it was submitted, along with others, to an arbitrator. Concerning this section regarding the effective date of the double pay, the Authority alleged that its obligation to pay double for the excess annual leave begins in August, 1991, two years after the effectiveness of the Decree reviewed on July 6, 1989, since it was after it was in force that the annual leave began to be credited and to count, with the maximum limit of accumulative days being in August, 1991 and it was over that limit accrued during the effectiveness of the 8th review of the Decree, that double pay was given. The Union, on the other hand, alleged that the 8th review of the Decree refers to the annual leave that at *that* moment the employee would have been

entitled to after having already accrued it and not only to those days that were going to be accrued as of that date.

Based on the hermeneutic principles stated in *Díaz vs. Secretary of the Treasury*, 116 DPR 865, the Arbitrator resolved correctly, according to our belief, that the Decree referred to the annual leave accrued up to that moment since, if an employer had kept an employee up to then for more than two years without giving him his annual leave after the maximum accumulative time, he was in violation of public policy, and that is what the penalty of double pay after the maximum two-year accumulative time, seeks to prevent.

The Authority alleges before us that the Arbitrator erred in retroactively extending the provisions of the Decree, modifying or amending it, when applying the penalty of this 8th review of the Decree or the accrued annual leave under the previous review of the Decree. We understand and resolve that the Authority is not right.

During all the previous reviews of the Decree, it was permitted to accrue annual leave up to the maximum number of days corresponding to what was earned during two years. That did not vary in the new review, neither did the rule that the worker was entitled to go on annual leave. What the 8th review provided was that, as of that time, July 6, 1989, the days accrued exceeding that limit would not be lost when, and in the cases where, contrary to public policy, the employer did not grant his employees annual leave when they reached the maximum limit of accrued days. When the maximum limit of days of annual leave accrued were exceeded on July 6, 1989, or after that date, by days of annual leave earned, some before and others after that date, the penalty of twice the salary would be paid for the period corresponding to the excess of the maximum limit of two years provided in the 8th review, *in addition* to granting the total amount of days of annual leave accrued up to that time during which he would receive regular pay. To use the days accrued under the effectiveness of the

previous review to set and fill a maximum limit of accumulative days after which the penalty would be paid prospectively, does not constitute a retroactive application of the Decree.

We appreciate the fact that the Arbitrator acted correctly when he rejected, by implication, that it would be necessary to wait for the prospective and maximum accrual of annual leave for two years, ignoring the days accrued previously, in order to then apply the penalty of double pay. Furthermore, we appreciate that his actions were consonant with and in support of public policy that no employee should be kept from taking his annual leave for over two years.

The Authority also challenges that the Arbitrator had retained jurisdiction in order to later determine attorney fees. These, the attorney fees, are actually related to the two principal controversies adjudicated in the award, for the determination of which I have been challenged in this appeal by the Authority. Those controversies deal with the interrelation between Mandatory Decree No. 38 and the Collective Bargaining Agreement in force between the parties in their provisions regarding the liquidation of sick leave and annual leave. The Arbitrator ordered the manner in which the excess days accrued for these leaves would be liquidated, and regarding the request for fees pertaining to the labor party, it ordered that it would be provided after the Employer informs the total amount of wages involved. Since the total amount earned or to be earned is an important element in determining the amount to be fixed for attorney fees, the arbitrator acted correctly. That information would help him to be fair.

The filing of this case is ordered.
TO BE ENTERED AND NOTIFIED.
Issued in San Juan, Puerto Rico, on June 8, 1993.

(Signed)
FLAVIO E. CUMPIANO
JUDGE

I CERTIFY: JUNE 10, 1993
Paulita Santiago Cartagena
General Clerk
By: (Illegible signature)
Deputy Clerk

United States District Court
For the District of Puerto Rico
— CERTIFIED —
To be a correct translation prepared by
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Appendix B — Arbitration Award

(Translation)

Commonwealth of Puerto Rico
DEPARTMENT OF LABOR AND HUMAN RESOURCES
CONCILIATION AND ARBITRATION BUREAU
505 Muñoz Rivera Ave.
Hato Rey, P.R. 00918

PORT AUTHORITY OF PUERTO RICO (Employer)	:	ARBITRATION AWARD
And	:	RE: PAYMENT OF THE EXCESS ACCRUED FOR SICK LEAVE AND ANNUAL LEAVE - DECREE NO. 38 AND THE COLLECTIVE BARGAINING AGREEMENT
BROTHERHOOD OF OFFICE WORKERS AND AFFILIATED BRANCHES OF PUERTO RICO AND CATAÑO TRANSPORTATION WORKERS UNION (Unions)	:	CASES NO.: A-1635 A-1893
	:	ARBITRATOR:
	:	PEDRO SANTOS

I - MATTERS TO BE RESOLVED

In the instant complaint, the parties agreed to submit the matters to be resolved by means of stipulations of facts, documents and simultaneous allegations regarding the controversy.[1] The

[1] The Puerto Rico Port Authority was represented before the Arbitrator by Atty. Francisco L. Acevedo. The Brotherhood of Office Workers and Affiliated Branches (HEO), by Atty. José E. Carreras Rovira and (continued...)

complaint deals with the payment of excess sick leave and annual leave. Thus, the parties have asked the Arbitrator to resolve "whether or not the Authority (the Employeer) has paid correctly the excess sick leave and annual leave (vacations), in the light of the facts and documents stipulated, the Collective Bargaining Agreement, the Jurisprudence and applicable mandatory decrees. If the Authority has not paid correctly, the Arbitrator is to determine the appropriate remedy."[2]

II - SICK LEAVE

A. Applicable Provisions of the Collective Bargaining Agreement:

> Article XXIV, Sec. 1
>
> "Section 1: *The employees covered by this Agreement shall be entitled to accrue twenty (20) work days a year* for sick leave, and shall have the right to go on leave be it due to illness of the employee himself or due to a contagious disease in the family."
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> ...
>
> "Section 7: a) *The Authority shall pay one hundred per cent (100%) of the sick leave accrued in excess of the six*

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[1](...continued)
the Cataño Transportation Workers Union (UETC), by Atty. Norman Pietri. Since the UETC had a complaint before the NCA (Negociado de Conciliacion y Arbitraje-Conciliation and Arbitration Bureau) regarding the same matter (Case A-1893), the three parties, for reasons of procedural economy, agreed that both cases be seen jointly, the UETC and the HEO uniting vis a vis the Employer.

[2] See Submission Agreement. It is proper to clarify that in joining the case, the Cataño Transportation Workers Union is only claiming the part corresponding to annual leave, it is not making any claim whatsoever regarding sick leave.

hundred and fifty (650) hours, as of January 31, 1991, and so on, up to the effective date of this Agreement and it shall be paid on or before March 31, 1991, and so on. (Emphasis added)

b) *The Authority shall pay one hundred per cent (100%) of the sick leave in excess of the four hundred and fifty (450) hours (if this action is selected)*, informing it to the Personnel Office, in writing, by November 30, 1990, by January 31, 1991, and so on, up to the effective date of this Agreement, and it shall be paid on or before March 31, 1991 and so on. (Emphasis added)

c) In the event that an employee chooses to keep the excess of the six hundred and fifty (650) hours by January 31, 1992, he may inform it in writing to the Personnel Office by November 30, 1991 to make the permanent change."

...

"Section 13: The Authority shall pay a lump sum at the regular wage rate that an employee may earn for sick leave not used, to any employee covered by this Agreement who separates from service permanently or temporarily due to retirement, age or disability."

B. Applicable Provisions of Mandatory Decree No. 38 (8th Review — 1989)

Article VII — Sick Leave

"*Every employee shall be entitled to sick leave, with full pay, at the rate of 1 1/12 days (13 days a year) for each month that he has worked at least one hundred (100) hours*. Sick leave not used by the employee during the course of the year, shall be accrued for the following years. If the accrued days of sick leave were to exceed twenty-six (26) days by November 30th of any year, the employer shall be

obliged to pay in cash, the period exceeding said twenty-six (26) days, at the rate of eight hours a day at the rate per regular hour that the employee may be receiving on that date. The payment for the excess of twenty-six (26) days, shall be made by not later than the 15th of the following month..." (Emphasis added).

III. PAYMENT OF THE EXCESS SICK LEAVE ACCRUED — ANALYSIS AND CONCLUSIONS

We have seen what the Collective Bargaining Agreement provides, as well as the applicable Decree, regarding the payment of the excess sick leave accrued. The Collective Bargaining Agreement (Art. XXIV Sec 7 (a) supra), provides the payment of 100% of the excess sick leave accrued over 650 hours (81.25 days),[3] while Decree No. 38 provides the payment of this type of leave in excess of 26 days. Furthermore, we have seen that the Collective Bargaining Agreement has an ample advantage over the Decree regarding the number of days of sick leave that it grants the employee. The Agreement grants 20 days a year while the Decree only grants 13 days.

The Employer, for years, has been paying the excess sick leave, taking into consideration both the Collective Bargaining Agreement as well as Decree No. 38.[4] Thus, for example, when an employee has accrued in three years, sixty (60) days of sick leave under the Agreement, the Employer assumes that 39 of those days were accrued under the Decree (13 days per year) and the rest up to sixty, were accrued under the Agreement. Then he pays under the Decree, 13 days (the difference between 26 and 39). He pays the days accrued under the Collective Bargaining Agreement

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[3] Unless the employee wants to avail himself of the provisions of Sec. 7(b), in which case it would be over 450 hours (56.25 days).

[4] See stipulated fact No. 7 and Employer's allegation, pages 4 and 7.

according to the Agreement (over 650 and 450 hours). The Union alleges that the way the Employer pays this leave is against the law (the Decree) and damaging to the interests of the workers,[5] and that the Employer is obliged to pay all the days in excess of the twenty-six (26) that the Decree establishes. In the aforementioned example where the employee accrued 60 days in three years based on the Collective Bargaining Agreement, (20 per year), according to the Union's position, the Employer would have to pay 34 days (the difference between 26 and 60). According to the Union, the Employer cannot use the limit of 650 and 450 hours that the Agreement establishes to pay the excess sick leave accrued, because that is contrary to the limit of 26 days. Is the provision of the Collective Bargaining Agreement in this case contrary to the public policy set forth in the Decree? In no way whatsoever.

Our Superior Court has stated that "In its essence, sick leave with pay is more than just a common fringe benefit of an employee. It is a fundamental necessity for the Puerto Rican worker which arises from an involuntary necessity, not chargeable to the worker. When this leave is made accumulative, the Employer as well as the employee derive benefits from same, since, due to it, absenteeism is dissuaded and the worker is provided with the opportunity of accruing leave for whenever he may need it due to illness."[6] When expressing itself regarding the unliquidable reserve of the sick leave that Decree No. 74 provides, the Honorable Court states that, "The public policy pursued is that of avoiding the possibility of a worker finding himself in the situation of not having accrued sick leave when he may need to avail himself of same due to health reasons, as well as avoiding unjustified

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[5] See Union allegation Page 3

[6] J.R.T. v. Pier Adm. Board 88 JTS 117.

absenteeism."[7] Even though we are dealing here with Mandatory Decree No. 38, public policy is the same: to establish the minimum unliquidable reserve of sick leave to protect the employees in cases of illness preventing their wages from diminishing, and by ordering the payment of the excess accrued, avoiding unjustified absenteeism and thus promoting productivity. This public policy does not prevent the parties from improving the benefits that same establishes. The right to Collective Bargaining that our labor-management legislation supports, would have no meaning if a Union could not improve in the negotiating table those benefits that either by law or decree, the workers may (at a given moment) be already enjoying, giving and receiving some things for others, as is normal in all negotiations.

In this case, the parties, when negotiating Sections 1, 7(a) and 7(b) of Article XXIV of the Collective Bargaining Agreement, improved the provisions of the Decree by establishing *20* days annually of sick leave, (*7* days over the *13* established by the Decree) and extended the unliquidable reserve of 26 days to 650 hours (81.25 days) and 450 hours (56.25 days). What the parties did is not contrary to public policy but consistent with it, and the provisions of Sections 1, 7(a) and 7(b) of Article XXIV, are perfectly valid.[8] These are the provisions that are in force regarding the accrual of sick leave and liquidable and unliquidable reserves of this type of leave. The provisions of the Decree do not apply in this respect.

Regarding this same matter, the Honorable Secretary of Labor has stated (Opinion 91-4, November 1, 1991) that "there is nothing in the law or in the decrees that prevents an employer from granting annual or sick leave over what the applicable decree

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[7] J.R.T. v. Vigilante Inc. 90 JTS 30.

[8] What the parties certainly could not do was to reduce or eliminate the unliquidable reserve. — J.R.T. v. Vigilante, supra.

provides. In these cases, the employer (in this case the Collective Bargaining Agreement) shall establish the criteria for their accrual, enjoyment and payment without, of course, having to comply with the criteria of the decree, in order to do it. In fact, he could establish criteria for their accrual, enjoyment and payment, different from, lower than, or better than those of the decree."

We should add that the position assumed by the Union in this case, overlooks the fact that the provisions of Decree No. 38 have been provided in said decree since 1974 (sixth review)[9] and that the Collective Bargaining Agreement in force between the parties was signed on August 16, 1990.[10] The Union was able to negotiate with the Employer that the total amount of leave accrued by the employee over the limit of the 26 days that the Decree establishes, be paid, but it did not do it. On the contrary, it was the Union itself the one that set, in agreement with the Employer, the limit of the 650 and 450 hours that the Collective Bargaining Agreement provides. It has been said that the Collective Bargaining Agreement may be classified as a constitution or basic statute that regulates industrial life in an establishment, and the power to govern is shared by the Union and Management."[11] In reference to the same matter, the Supreme Court of Puerto Rico has stated that "*The importance that the collective bargaining agreement has in the labor field can hardly be overestimated.*" The same, generally, represents the result of long and heated hours of discussion between the employer and the spokesman for his employees' claims. The execution and signing of a collective bargaining agreement represents the triumph of the power of nego-

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[9] See stipulated fact No. 5

[10] See stipulated documents, Joint exhibit 1 (Collective Bargaining Agreement)

[11] Demetrio Fernández — Labor-Management Arbitration in Puerto Rico; Judicial Magazine UPR — Vol. XXXV — No. 1

tiation over force, of prudence and reason over temerity and violence, and the need that we all have to live in harmony with each other. In short, the collective bargaining agreement is a mechanism that — besides being a contract that, as such, *has force of law between the undersigned parties* as long as it does not violate the laws, morals or public order, *Pérez v. Electric Power Authority*, 87 D.P.R. 118, 122 (1963) — promotes peace and stability in the labor-management field. *Its validity and efficacy, consequently, must always be the object of the most enthusiastic endorsement by the courts.*"[12] (Emphasis added) This Honorable Court has also stated that, "The law recognizes the basic assumptions of civilized life" and that "one of those assumptions which has become a rule of law is that men must comply with their commitments."[13] The Union, in this case, as the exclusive representative of the workers, came to an agreement with the Employer regarding the manner in which the sick leave would be liquidated, extending the unliquidable reserve that the decree establishes, and since the agreement was not contrary to the intention of the Decree, the Union has to abide by the agreement.

We understand, then, that the way in which the Union claims that the Employer liquidate the excess sick leave accrued, is not correct. On the other hand, according to our analysis, the way in which the Employer has been liquidating that leave is not correct either, since what is in force is the Collective Bargaining Agreement and not the Decree. Sick leave is not accrued according to the Decree any longer, but according to the Collective Bargaining Agreement, and the correct way to liquidate the excess sick leave is according to what is provided in sections 7(a) and 7(b) of Article XXIV, that is, over 650 and 450 hours. The Collective Bargaining Agreement is perfectly clear.

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[12] Liquor Industry Union Serralles Distillery, 116 DPR 348 (1985)

[13] Adorno v. Land Authority 83 DPR 258 (1961) and others.

IV. ANNUAL LEAVE

A. Regarding annual leave, the Collective Bargaining Agreement between the Employer and the HEO provides, we quote:

Article XXIII

"Section 1: The employees covered in the Appropriate Unit *shall be entitled to accrue regular leave at the rate of two and one half (2 1/2) days per calendar month worked.*" (Emphasis added)

...

Section 9: Every employee shall be entitled to receive the equivalent in cash for annual leave accrued as of the date of resignation or separation from service for other reasons."

The Agreement between the Employer and the UETC establishes, in turn, regarding annual leave:

Article XVII

"Section 1: The regular workers and substitutes are entitled to annual leave with pay which may be accrued without limit at the rate of eighteen (18) work hours for each work month up to a total of two hundred and sixteen (216) work hours.

Section 2: Temporary and project workers shall be entitled to annual leave with pay which shall be accrued at the rate of eighteen (18) work hours for each work month up to a total of two hundred and sixteen (216) work hours per year, as long as they work a minimum of one hundred and forty (140) regular hours per calendar month."

B. On the other hand, Mandatory Decree No. 38 provides, regarding the same manner (8th review 1989), we quote:

Article VI — Annual Leave

"Every employee shall be entitled to annual leave with full salary, which shall become effective when he begins his leave at the rate of one and five twelfths (1 5/12) of a work day for each month in which he has worked at least one hundred (100) hours. *This annual leave is equivalent to seventeen (17) work days a year.*"

...

"By means of a written agreement between the employer and the employee, the annual leave may be accrued for more than a year, but never for more than two."

"The employer who does not grant any of his employees the annual leave to which they are entitled after having accrued them for two (2) years, shall grant them the total amount accrued up to that time, paying them two (2) times the corresponding salary for the period in excess of said two years." (Emphasis added)

"In the event that an employee ceases his work, the employer shall pay the total amount accrued, even if it has been less than a year."

"Any contract by means of which an employee gives up, for money or any other reason, his annual leave, shall be illegal and null." (Emphasis added)

V. LIQUIDATION OF THE EXCESS ANNUAL LEAVE — ANALYSIS AND CONCLUSIONS

According to the aforementioned provisions of Decree No.38, (Article VI, supra), the workers belonging to both Unions (H.E.O. and U.E.T.C), accrue 17 days of annual leave per year

(1 5/12 days per month), while according to the Collective Bargaining Agreement (Art. XXIII, Section 1, supra), those belonging to the H.E.O. accrue 30 days a year (2 1/2 days per month) and those belonging to the U.E.T.C., 216 hours per year (18 hours per month). The Unions claim that payment be made according to Decree No. 38, that is, double pay for all the days accrued in excess of 34 days (the maximum accumulative in two years under the Decree at the rate of 17 days per year).

The Employer gives the following example regarding the manner in which he has been paying the annual leave: An employee accrued in 3 years, 90 days of annual leave (30 per year, according to the HEO Collective Bargaining Agreement). Of those 90 days, the Employer assumes that 51 were accrued under the Decree (17 per year) and the rest up to 90 under the Collective Bargaining Agreement. Then he pays the difference between the limit of 34 days and 51 (17 days), at double wage rate.[14] According to the Unions, in this example the Employer would have to pay double time, not for the difference between 34 and 51, as the Employer sustains, but for the difference between 34 and 90 days (56 days).

After analyzing the Agreements, we see that they greatly improve the provisions regarding annual leave by providing, in the case of the HEO, 13 additional days a year over the 17 established by the Decree, and in the case of the U.E.T.C, 10 days. Therefore, just as for sick leave, the provisions in force are those of the Collective Bargaining Agreement and not those of the Decree.

We understand that the intention of the public policy set forth in the Decree by providing double pay for excess annual leave accrued, is to encourage that an employee not work over two years without taking a break for a well-deserved rest. We do not seek to reward the employee, but to oblige the Employer to grant an

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[14] Employer Allegation p. 13

employee his annual leave. The Decree does not establish specifically a limit of 34 days. That limit is assumed because it is the maximum number of days that can be accrued in two years, under the Decree. Nevertheless, when the parties improve the Decree and provide, as in this case, a number of days annually greater than the 17 provided by the Decree, it is logical to assume that the double pay is not as of the 34 days but as of the maximum accrued by the employee in two years, under the Collective Bargaining Agreement. To impose double pay for annual leave in excess of the 34 days, would have the effect of penalizing the Employer precisely for having improved the number of days that the Decree grants for annual leave, and we do not believe that this was the intention of the Hon. Minimum Wage Board when it provided the penalty of double pay for annual leave in excess of the maximum leave that can be accrued in two years, under the Collective Bargaining Agreement. In our opinion, then, the way in which the Employer has been paying the excess annual leave is not correct, and neither is it correct, the way that the unions claim that they be paid. The Decree having been improved by the Collective Bargaining Agreement, the accrual of annual leave does not apply any longer according to the Decree, but according to the Collective Bargaining Agreement, and the limit over which double pay is imposed is on the maximum that can be accrued under the Agreement. Thus, in the example used by the Employer in which the employee accrues 90 days in 3 years, according to the HEO Agreement, the employee is entitled to enjoy the total 90 days accrued, and he must be paid double for 30 of those days.

The parties have raised a second point and it is regarding the date of effectiveness of the double pay that Decree No. 38, 8th Review (July 6, 1989) provides. The Employer sustains that his obligation to pay the excess annual leave double, began in August, 1991. According to the Employer, "a person who was an active employee on July 1989, that had not taken any annual leave

whatsoever, would accrue 34 days by July, 1991",[15] and any accrual by July 1991 over the 34 days, is what would have to be paid double. The Employer alleges that the amendment to Decree No.38 of 1989, "is of a prospective nature, as are all the amendments to the laws, unless the contrary is specifically provided", and that "no provision whatsoever exists in the Decree that indicates that the 1989 amendment has a retroactive effect. The Employer quotes Article 3 of the Civil Code, 31 L.P.R.A. Sec. 3, which provides that the laws shall not have a retroactive effect, unless they expressly provided the contrary.[16]

The Unions, on the other hand, sustain that in this case the Decree refers to the annual leave "to which (the employee) was entitled after having accrued it for two years" and that the Decree does not refer in any way to the leave that is to be accrued, instead directly penalizes the Employer for having accrued it for over two years."

In *Diaz v. Secretary of the Treasury, 114 — DPR 865*, (a case quoted by the Unions in which a very similar controversy is resolved)[17] our Supreme Court, quoting itself in Warner Lambert

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[15] We have already stated in our interpretation that it would not be 34 days but 60, according to the HEO Agreement.

[16] The Employer quotes, regarding the matter, cases: Baéz v. Horse-racing Commision, 63 DPR 483 (1944) and Franceschini v. Ujaque, 90 JT 988 (June 27, 1990)

[17] In this case of September 12, 1979, a group of employees from the Treasury Department who had not received a raise in salary for over 5 years, requested from the Secretary a raise in salary equal to a step of the corresponding scale, by virtue of Article 7(2) of Law No. 89 of July 12, 1979, regarding Uniform Retribution. The aforementioned article provides that "As of July 1, 1979 . . . those career employees . . . who had not received any type of raise in salary . . . during an uninterrupted period of five years . . . shall receive a raise in salary."

(continued...)

Co. v. Supreme Court, 101 DPR 378, when referring to Article 3 of the Civil Code invoked in this case by the Employer, stated that:

> "Said Article (Art. 3) only has the extent of a general rule of interpretation of statutes. It is not a rigid principle of absolute application . . . In Manresa's opinion, the article in itself is superfluous, since" . . . with the simple use of the general rules of interpretation of the law, the same conclusion would always be reached, even if the Code did not exist". . . Scaveola also adopts a flexible interpretation affirming with Laurent that "the legislator must not be chained to an absolute principle that would limit his freedom of action in detriment to society and the individuals." . . . This rule of interpretation is not a strait jacket. When the legislature has not expressed its intention clearly, said rule must not be followed blindly, ignoring the factors which could shed light on the legislative intention."

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[17](...continued)

The Secretary denied the employees' request adducing that the provision of the applicable law was Sec. 8.4 of the Personnel Regulation and that the request was premature because the date in which they would be entitled to the raise was December 1, 1981, because the five-year period for that type of raise began as of November 30, 1976 (date of approval of the Personnel Regulation). The Board of Appeals of the Personnel System, denied the employees' appeal, but the Superior Court revoked the Board and sustained the latter's appeal. In a petition for certiorari, at the request of the Secretary of the Treasury, the Supreme Court intervened. The Supreme Court sustained the employees' complaint and resolved, by interpreting the phraseology of aforementioned Article 7(2), that the intention of the legislator was that same cover every employee who by July 1, 1979, had already accrued five consecutive years without receiving a raise in salary.

As we may notice, the Honorable Court warns us against the use of the rule of interpretation of the Civil Code quoted by the Employer as a strait jacket when judging the intention of the law.

Upon examining Decree No. 38, (in this case, the law), we find that in its 7th Review it provided, and we quote: "Any agreement by means of which the employee or worker gives up for money or any other reason, his annual leave, shall be illegal and null." It also provided that "by means of a written agreement between the employer and the employee, the latter (annual leave) may be accrued for more than a year, but never for more than two." This means that the annual leave could be accrued for two years, but in no case should an employee work for over two years without, in fact, taking his annual leave. The 7th Review of this Decree did not provide anything regarding double pay for excess annual leave accrued. That is, it did not provide any penalty whatsoever against the Employer for violating the Decree. The 8th Review of the Decree is the one that introduces double pay for leave in excess of that which may be accrued in two years. Both in the 7th as well as the 8th Review of Decree No. 38, it can be clearly observed that the public policy set forth is that of encouraging the employee to take, as a matter of fact, his annual leave, and that in no case may he work for over two years without taking it. What the 8th Review does is to provide the double pay that the Decree did not have, precisely to oblige the Employer to give his employees annual leave. We see that the 8th Review of the Decree began to be in force on July 6, 1989.[18] As of that date, states this reviewed Decree, "the Employer who does not grant any of his employees the annual leave to which they are entitled after having accrued it for two (2) years, shall grant them the total amount accrued up to that time, paying them (2) times the corresponding salary for the excess of the two years."

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[18] See said Decree p. 10.

We understand that the phrase "does not grant", must be interpreted as referring to the period as of that moment, that is, as of July 6, 1989; not two years as of July 6, 1989, as the Employer sustains. Notice that if the Employer by that date had not given an employee for over two years, his annual leave, after the maximum that could be accrued, he was in clear violation of the public policy provided in the decree, and that is what the double pay for the maximum excess leave that can be accrued in two years, seeks to prevent. It makes no sense to think that the Hon. Minimum Wage Board had the intention of preventing the employer from violating the public policy within two years and not at the precise moment in which it made effective the review of the Decree.

Therefore, we understand that the date in which the Employer is obliged to abide by the provision of double pay for annual leave provided by Decree No.38 (8th Review), is as of July 6, 1989, the date which the Decree itself indicates that the Review is to be in force, as is claimed by the petitioning unions in the instant complaint.

VI. DECISION AND REMEDIAL ORDER

In relation to sick leave, the way in which the Employer has been liquidating the excess leave accrued, is incorrect. The accrual as well as the payment for the excess accrued must be made according to the provisions of Article XXIV, Sections 1, 7(a) and 7(b) of the collective bargaining agreement, respectively, and not based on the Decree, unless the HEO accepts the way in which the Employer is currently doing it.

Regarding the way in which the Employer pays the excess annual leave, we understand that it is also incorrect.

Annual leave as sell as sick leave is accrued according to what the Collective Bargaining Agreement provides, without taking into consideration the Decree. Once the employee accrues the maximum that may be accrued in two years under the Agreement,

he is entitled to double pay for all leave that exceeds the maximum that may be accrued in those two years, this, as of July 6, 1989.

The Employer shall pay the excess annual leave to all employees who are members of the H.E.O. and the U.E.T.C., in agreement with what was previously provided, as well as pay these employees any other penalty that corresponds by law.[19] We shall provide regarding the petition for attorney fees of the labor party, after the Employer informs us the total amount of fees involved.

In Hato Rey, Puerto Rico, on December 24, 1992.

(SIGNED)
PEDRO SANTOS
ARBITRATOR

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[19] Regarding the additional compensation to be paid, see Law No. 96 of June 26, 1956, amended (PR Minimum Wage Act) Sec. 27(a).

CERTIFICATION

Filed on record, on December 24, 1992; a copy is sent by mail on this same date to the following persons:

1. MR. JUAN R. ROSA LEON, PRESIDENT
   BROTHERHOOD OF OFFICE AND
   COMMERCIAL WORKERS AND AFFILIATED
   BRANCHES, INC.
   BOX 8599 FDEZ JUNCOS STA.

2. MR. MIGUEL HERNANDEZ, DIR. REL. LAB.
   P.R. PORT AUTHORITY
   G.P.O. BOX 2829
   SAN JUAN, P.R. 00936

3. ATTY. FRANCISCO ACEVEDO
   P.O. BOX 366283
   SAN JUAN, P.R. 00936-6283

4. ATTY. NORMAN PIETRI
   BOX 19115
   FERNANDEZ JUNCOS STA.
   SAN JUAN, P.R. 00910-9115

5. ATTY. JOSE E. CARRERAS
   MIDTOWN BLDG. OFFICE-206
   421 MUÑOZ RIVERA AVE.
   HATO REY, P.R. 00918

JANNETTE MARTINEZ
SECRETARY

United States District Court
For the District of Puerto Rico
— CERTIFIED —
To be a correct translation prepared by
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Appendix C — Decision of the Supreme Court of Puerto Rico

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

Puerto Rico Port Authority Defendant — Appellant v. Brotherhood of Office Workers and others Plaintiffs — Appellees	No. RE-93-344	Appeal Review

Court composed of Chief Justice Andreu García and Associate Justices Messrs. Negrón García and Hernández Denton.

DECISION

San Juan, Puerto Rico, on September 10, 1993

This appeal, having been received as a certiorari — as is proper — is denied.[1]

In its first *allegation*, petitioner, the Ports Authority, holds that the retroactive application of Mandatory Decree No. 38 was not in accordance with the law. It adduces that Article 3 of the Civil Code, which prohibits the retroactive application of the laws, was violated. Petitioner is not right.

In *Warner Lambert* v. *Tribunal*, 101 D.P.R. 378, 386 (1973), we established that Art. 3 of the Civil Code is a general rule of interpretation and not "a principle of inflexible application"; approach reaffirmed in *Díaz* v. *Secretario de Hacienda*, 114 D.P.R. 865, 872 (1983).

---

[1] Last September 3 we denied a request of the Brotherhood. There, in an explained decision, we set forth the grounds. In their pertinent part, they are incorporated into this Decision.

Based on precept interaction, the retroactive application of the penalty imposed in this case in the Mandatory Decree must be assessed in the light of the public policy it implemented. If said public policy fosters that no employee works more than two years without enjoying his vacations, the penalty imposed advances and is in consonance with the public policy. On the other hand, if its application were only prospective, as the Authority contends, we would be sidestepping the safeguard that Decree No. 38 offers the workers. Under both avenues, said legally protected interest prevails.

II

In the *second* allegation, petitioner, the Authority, holds that the additional compensation imposed under Law No. 96 of June 26, 1956, is inadmissible. It tells us that it constitutes a double penalty and its effect, far from being compensatory, is punitive.[2]

On this particular, we notice that the arbitrator provided that "the employer shall pay excess vacations to all employees who are members of the H.E.O. and of the U.E.T.C. pursuant to the above provision, *as well as pay these employees any other penalty to which they are entitled under the law*", specifically he made reference to the aforestated Law No. 96.

In *Salgado* v. *Tribunal*, 92 D.P.R., 367, 371 (1965), we stated that "civil penalty sources in cases concerning the claiming of wages are Art. 13 of Law No. 379 of May 15, 1948, 29 L.P.R.A., sec. 282, and *Sec. 30(a) of the Minimum Wage Act of 1956, 29 L.P.R.A. 246(b)*". Consequently, further on we confirmed that the penalty is in accordance with the law "1. when the employer pays a compensation lesser than the one fixed for regular work hours and overtime; and, 2. *when the employee is*

---

[2] The penalty is equivalent to a sum equal to the compensation not paid by the Employer as liquidation of damages.

paid a compensation lesser than the one prescribed in the Minimum Wage Act, in a mandatory decree, in a collective bargaining agreement or in an individual work contract". (Pages 371-372) — emphasis supplied.

We concluded that the penalty was in order since it reactivates when an employer does not pay his workers what is adequate under the law. To sum up, the Authority is subject to the *additional* penalty imposed by Law No. 96. Its obligation to pay the accrued excess vacations *arose* by virtue of Decree No. 38 and its noncompliance gave rise to it.

III

In its *third* allegation, the Authority contends that the arbitrator erred by retaining jurisdiction over the award in order to determine the amount of attorney's fees, inasmuch as the "Functions Officio" doctrine, which establishes that once the award is issued the arbitrator loses jurisdiction, is applicable. The Authority is not right either.

In this case, the arbitrator expressly determined that he would impose the amounts of attorney's fees in accordance with the *sum total of the wages owed by the authority*. That act neither modified nor altered his award; but merely was imperative of the main remedy: adjudication of the main controversies and their subsequent computation.

The Court adopted it and the Chief Deputy Clerk certifies.

Carmen E. Cruz Rivera
Chief Deputy Clerk

United States District Court
For the District of Puerto Rico
— CERTIFIED —
To be a correct translation prepared by
/s/ Hilda Gutiérrez
Certified Court Interpreter
Administrative Office of the
United States Courts

Appendix D — Decision of the Supreme Court of Puerto Rico Denying Motion for Reconsideration

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

PUERTO RICO PORT AUTHORITY Defendant — Appellant vs. BROTHERHOOD OF OFFICE WORKERS AND OTHERS Plaintiffs — Appellee	No.: RE-93-344	REVIEW

DECISION

In San Juan, Puerto Rico, on January 28, 1994.

Regarding the Motion for Reconsideration of September 27, 1993, it is Denied.

It was decided by the Court and certified by the General Chief Deputy Clerk. Associate Justice, Mr. Alonso Alonso, did not intervene.

(Signed)
CARMEN E. CRUZ RIVERA
GENERAL CHIEF DEPUTY CLERK

United States District Court
For the District of Puerto Rico
— CERTIFIED —
To be a correct translation prepared by
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Appendix E — Decision of the Supreme Court of Puerto Rico Denying Second Motion for Reconsideration

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

PUERTO RICO PORT AUTHORITY Defendant — Appellant vs. BROTHERHOOD OF OFFICE WORKERS AND OTHERS Plaintiffs — Appellees	No.: RE-93-344	REVIEW

DECISION

In San Juan, Puerto Rico, on February 25, 1994.

As to the second motion for reconsideration filed in this case, it is denied. Abide by the decision.

It was decided by the Court and the General Chief Deputy Clerk certifies it. Chief Justice, Mr. Andréu García, and Associate Justice, Mr. Alonso Alonso, did not intervene.

(Signed)
Carmen E. Cruz Rivera
General Chief Deputy Clerk

United States District Court
For the District of Puerto Rico
— CERTIFIED —
To be a correct translation prepared by
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Notice of Entry of Decision

(Translation)

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

PUERTO RICO PORT AUTHORITY — APPELLANT
VS.
BROTHERHOOD OF OFFICE,
BUSINESS WORKERS AND
OTHERS — APPELLEE
CASE: RE-93-0344
ORI CASE: KAC-93-0116 CIVIL ACTION

CIVIL ACTION OR
OFFENSE

DOMINGUEZ HERNANDEZ DANIEL R
PO BOX 191732
SAN JUAN, P.R.

000000919
NOTICE

I CERTIFY THAT IN RELATION TO THE MOTION FOR RECONSIDERATION, THE COURT ISSUED THE ATTACHED DECISION:

PIETRI CASTELLON NORMAN — P.O. BOX 19115 — FERNANDEZ JUNCOS STATION — SAN JU

CARRERAS ROVIRA JOSE E — MIDTOWN BLDG, OFFICE 206 — 421 MUÑOZ RIVERA AVE.
ARBITRATION BUREAU — LABOR DEPT. — PRUDENCIO MARTINEZ BLDG.- M. AVE

SAN JUAN, PUERTO RICO ON MARCH 1, 1994

(SIGNED)
FRANCISCO R. AGRAIT LLADO
GENERAL CLERK
(INITIALS)
DEPUTY CLERK

United States District Court
For the District of Puerto Rico
— CERTIFIED —
To be a correct translation prepared by
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Appendix F — Statutes Involved

The relevant provisions of the Puerto Rico minimum wage laws are as follows:

Section 245a.

(a) There is hereby created in the Department of Labor and Human Resources a Minimum Wage Board . . . .

(e) The Board shall be empowered to approve, amend and repeal the regulations needed to carry out the purposes of section 245 et seq. of this title. Said regulations shall have force of law once they have been duly promulgated.

(P.R. Laws Ann. tit. 29, §245a(a) & (e))

Section 245l.

(a) The Board shall publish the draft decree recommended by the Committee, and the interested parties shall be allowed an undeferable term of thirty (30) days, reckoning from the date of publication of the draft decree in a newspaper of general circulation in Puerto Rico, for the filing of memoranda for or against approval of said draft decree on the basis of the data and information received by the Committee.

(P.R. Laws Ann. tit. 29, §245l(a))

Section 245p.

The Board shall revise the minimum wages and the provisions regarding vacation and sick leave fixed by section 245 et seq. of this title, or by decrees or orders of the Board with regard to each industry and the provisions on minimum compensation guarantees if there should be any, at least once every two (2) years.

(P.R. Laws Ann. tit. 29, §245p)

Section 246b.

(a) Any laborer or employee who receives a lower compensation than that fixed in section 245 et seq. of this title or in a mandatory decree, order or regulation of the Minimum Wage Board or in a collective bargaining agreement or an individual work contract shall be entitled to recover through a civil action the unpaid difference up to the total amount of the compensation to which he is entitled for wages, vacation, sick leave or any other benefit, plus an amount equal to the unpaid amount as additional compensation, besides the costs, expenses, interest and attorney's fees for the proceedings, which fees shall be in a reasonable amount, in no case lower than fifty (50) dollars, all this irrespective of any agreement to the contrary.

(P.R. Laws Ann. tit. 29, §246b(a))

Mandatory Decree No. 38 (8th revision 1989) provides in relevant part:

> Every employee shall be entitled to fully paid vacation which shall become effective upon beginning to use them at the rate of one and five-twelfths (1 5/12) work days for each month in which he has had at least one hundred (100) work hours. This vacation time is equivalent to seventeen (17) work days per year.
>
> Vacation time shall be used consecutively by the employee, provided that at the written request of the employee and by mutual agreement, these may be divided into periods of no less than five consecutive days and shall be granted annually or semiannually in such a manner so as to not interrupt the normal operations of the business, for which purpose the employer shall establish the pertinent shifts. The employee may not demand to use his vacation time until he has accumulated it. The use of vacations shall be considered as time worked.

By an agreement in writing between the employer and employee, vacation time may be accumulated for more than one year, but never more than two.

Any employer who does not grant any of his employees the vacation time that he is entitled to after it has been accumulated for two (2) years, must grant him the total accumulated, paying two (2) time the corresponding salary for the period in excess of said two years.

Appendix G — Excerpt from Petitioner's Motion for Reconsideration

IN THE SUPREME COURT OF PUERTO RICO

PUERTO RICO PORT AUTHORITY Appellant v. BROTHERHOOD OF OFFICE, TRADE, AND OTHER WORKERS Appellee	No. RE-93-0344 RE:

MOTION FOR RECONSIDERATION

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DEPARTMENT
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* * *

ARGUMENT

A.

IN THE FIRST PLACE, a reconsideration of the Denial issued is justified because the interpretation that this Honorable Forum has endorsed with the "Denied" it issued, violates the Constitution of the Commonwealth of Puerto Rico, Art. II Sec. 7, and the Constitution of the United States of America, Art. I Sec. 10. This is so because, by virtue of a rule not even by means of law- what, for many, many years was perfectly legitimate and constitutional, in accordance with the Collective Bargaining Agreement (a contract), and the past reviews of Decree Number 38, has become illegal.

At the Port Authority, until midnight of July 5, 1989, vacation days *accrued in excess of the requirements of the Mandatory Decree* were simply accrued at the employee's discretion, without the imposition of penalties for the subsequent enjoyment by the employee or their liquidation upon cessation of his duties. In this sense, the vacation days accrued in excess of the Decree were transformed into a type of savings account, once the employee had used at least the vacation owed by Decree (17 days per year). Once the employee had taken those seventeen (17) days per year, the employee, at his convenience, could either use the full number of days authorized by the Agreement (13 additional days), or accrue one or several days in excess of the Decree, up to the

maximum authorized by the Collective Bargaining Agreement. All of this was in perfect harmony with the existing Collective Bargaining Agreement, the contract that governed the relationship between the herein litigating parties[2]. In other words, under the Mandatory Decree, seventeen(17) days of vacation per year are ordered. Under the Collective Bargaining Agreement, thirty (30) vacation days per year were granted. In this sense, those days in excess of the ones required by the Mandatory Decree, stipulated in the Collective Bargaining Agreement (13 additional days per year), could be accrued, without penalties, at the discretion of the employee, under the Collective Bargaining Agreement[3].

However, on July 6, 1989 and according to the interpretation accepted by this Honorable Forum, Decree 38 suddenly rendered illegal the accumulation of excess days which, under the Agreement, had been legal. In so doing, it forced the Port Authority to pay four (4) times for each accrued day and to respond to a millionaire claim by virtue of an interpretation of the Mandatory Decree concerning certain aspects that, under the current Collective Bargaining Agreement, were perfectly legal and valid.

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[2] Specifically, Article XXXIII, Secs. 9 and 12 of the Collective Bargaining Agreement, provide (page 100 of the appendix) as follows: "Section 9: All employees shall be entitled to receive in cash the equivalent of the annual leave he has accrued as of the date of his resignation or separation from service for other causes. Section 12: Employees who are approaching retirement after more than ten (10) years of service with the Authority shall have no limitation of accrual during the last three (3) years of service, after they have officially, finally and firmly announced their intention to retire. If the employee fails to retire after the three (3) years previously announced have elapsed, the first of the three (3) years thus accrued shall be liquidated on the basis of the salary earned during said year".

[3] In fact, under Mandatory Decree 38, payment of those accrued excess days was expressly prohibited. See *Conclusion Infra* of this motion.

The statements made by the Honorable Secretary of Labor in his *Opinion 91-4, Labor Journal*, Volume XVI, No. 50, March, 1992 are fully applicable when he states:

There is nothing in the law, nor in the decrees, that can prevent an employer from granting *vacation or sick leave* in excess of the provisions of the applicable decree. In these cases, the employer is the one who shall establish the criteria for their accrual, use and payment without having to comply, of course, for that purpose, with the criteria of the decree. **In fact, he could establish criteria for their accrual, use and payment which are different from, inferior to or better than the decree.** Although these are not rights under the decree, they are contractual rights whose parameters are the non violation or reduction of the decree rights. An employer may grant, by virtue of an individual work contract, or of a collective bargaining agreement, more benefits than a mandatory decree, but never fewer". See also *Junta Relaciones del Trabajo v. Vigilante, Inc.*, 1990, 90 JTS 30. (Emphasis added).

Hence, from the aforementioned Secretary's Opinion it is crystal clear that the parties in a Collective Bargaining Agreement can stipulate the manner in which they are going to accrue and pay benefits over and above those granted by the law, since all that the Mandatory Decree establishes are "working conditions" *JRT v. Vigilantes*, Supra p. 7513. And the manner in which that vacation is going to be accrued and paid was necessarily considered in the negotiation process that culminated in the Collective Bargaining Agreement. Had the parties known that benefits beyond those provided in the Decree itself would be regulated, perhaps the results of the negotiation would have been different. Therefore, said agreement having been set forth in a previous contract, the state cannot -by constitutional mandate- alter the manner in which those greater concessions are to be liquidated.

Trusting in this power, and under the constitutional protection against the violation of contractual relations, the Port

Authority relied on the contract entered into with the Union regarding vacation, as set forth in the Collective Bargaining Agreement. Therefore, there cannot prevail an interpretation whereby the State retroactively penalizes one of the contracting parties, because of the manner in which concessions greater than those provided in the decree are liquidated. See in Puerto Rico *Warner Lambert co. v. Superior court*, 101 D.P.R. 378 (1973) and, in the United States, *U.S. Trust Corp. of New York v. New Jersey*, 431 U.S. 1 (1977); *Allied Structural Steel v. Spannaus*, 438 U.S. 234 (1978); Tribe, *American Constitutional Law* 2d Ed. 1988 p. 617 et seq.

* * *

Appendix H — Excerpt from Petitioner's Second Motion for Reconsideration

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

PUERTO RICO PORT AUTHORITY Defendant — Appellant vs. BROTHERHOOD OF OFFICE WORKERS AND OTHERS Plaintiffs — Appellee	No.: RE-93-0344 RE: REVIEW

SECOND MOTION FOR RECONSIDERATION

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* * *

II.

SECOND, it is an overused doctrine in our jurisdiction that the parties in a Collective Bargaining Agreement may agree upon the manner in which the benefits negotiated in same are to be accrued and paid. More rightly so, when the benefits exceed those granted by law.[4]

Inevitably, the manner in which the vacation days agreed to in the Collective Bargaining Agreement were to be accrued and paid, was a fundamental consideration in the negotiation process which was finally stated in the Collective Bargaining Agreement by the granting of thirty (30) days. Had the parties known that in the Decree the accruement and payment of vacations would be regulated in detriment to the Authority, obliging double pay for those days, maybe the result of the negotiation would have been otherwise. Therefore, once that agreement is set forth in a previous contract, the State is precluded -- by constitutional imperative -- from altering the manner in which those major concessions are to be liquidated. Precisely, under constitutional protection against the

---

[4] Notice that all that the Mandatory Decree establishes are "Minimum working conditions" which may be improved during the process of collective negotiation. ***JRT vs. Vigilante***, 90 JTS 30, Opinion 91-4 of the Labor Secretary, Revista del Trabajo, Volume XVI, No. 50, March 1992.

deterioration of contractual relations, was that the Ports Authority trusted that what was contracted with the Union (as stated in the Collective Bargaining Agreement regarding vacations) would not be altered retroactively by the State. Therefore, an interpretation of the Mandatory Decree by means of which the State retroactively penalizes one of the contracting parties because of the manner in which concessions greater than what is provided in the Decree are liquidated, cannot prevail. See in Puerto Rico ***Warner Lambert Co. vs. Tribunal Superior***, 101 D.PR.R. 378 (1973) and in the United States, ***U.S. Trust Corp. of New York vs. New Jersey***, 431 U.S. 1 (1977); ***Allied Structural Steel vs. Spannaus***, 438 U.S. 234 (1978); Tribe, *American Constitutional Law*, 2d Ed. 1988, p. 617 and ss.

That is why the "Denied" issued violates the Constitution of the Commonwealth of Puerto Rico, Article II, Sec. 7 and the Constitution of the United States of America, Article I, Sec. 10.

III.

As in previous reviews, under the seventh review of Mandatory Decree No. 37 (p. 146 Appendix) in force since 1983, up to July 5, 1989, it was textually provided:

> **"ANY AGREEMENT BY MEANS OF WHICH AN EMPLOYEE OR WORKER WAIVES, FOR MONEY OR OTHER CAUSES, THE ENJOYMENT OF HIS VACATIONS, SHALL BE ILLEGAL AND VOID."**

In faithful compliance with the above-mentioned provisions, the employer — in this case, the Port Authority — until July 1989 **was legally precluded from paying any money whatsoever** to its employees for vacations accrued in excess of two (2) years, due to an express provision of the Mandatory Decree.

On the other hand, under Mandatory Decree Number 37 in its 8th Review (p. 161 Appendix) which was in force as of July 6, 1989, the following was expressed for the first time in the history of Decree Number 38:

"THE EMPLOYER WHO DOES NOT GRANT ANY OF HIS EMPLOYEES THE VACATION TO WHICH THEY ARE ENTITLED AFTER HAVING ACCRUED THEM FOR TWO (2) YEARS, MUST GRANT THE TOTAL AMOUNT ACCRUED AS OF THAT MOMENT, PAYING TWO (2) TIMES THE SALARY CORRESPONDING TO THE PERIOD IN EXCESS OF SAID TWO (2) YEARS."

It is necessary to repeat that, as it has been explicitly interpreted by this Honorable Forum in the "Denied" issued in the Appeal, implicitly in the "Denied" referring to the Reconsideration, with the above-mentioned provision — which is completely contrary to the original — the Port Authority is obliged to pay four (4) times for each day accrued. Precisely, the "debt" arises because of the days that the Authority, up until then, was precluded from paying and suddenly was obliged to respond in millions for vacations accrued and not paid during the period in which the 7th Review of Mandatory Decree Number 38, was in force. Review which textually precluded the economic satisfaction of said vacation days. Hence, the valid interpretation of this Honorable Forum implies a violation of the local and federal constitutional rights of the Port Authority.

* * *

United States District Court
For the District of Puerto Rico
— CERTIFIED —
To be a correct translation prepared by
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Appendix I — Opinion No. 91-4
of the Secretary of Labor of Puerto Rico

(Translation)

[logo] Department of Labor and Human Resources

Opinions of the Secretary
Concerning Legislation to Protect Labor

Ruy Delgado Zayas
Secretary
Opinion 91-4 Department of Labor and Human Resources

November 1, 1991

VACATION LEAVE IN EXCESS OF TWO YEARS

Many of the mandatory decrees approved by the Puerto Rico Minimum Wage Board provide that the accrued days of vacation leave in excess of two years must be paid at the rate of double the corresponding wage.

That is, these mandatory decrees direct that in the case of those vacation days which have accrued for over two years and which the employee has still not enjoyed, the employee must grant the employee the enjoyment of these days in excess of two years by paying him or her double his/her wage for said days.

The rules on accrual, enjoyment and payment of vacation leave provided in the mandatory decrees, are established by these same decrees and are addressed to the leave created therein.

The Department of Labor and Human Resources administers the laws which protect labor and see to their faithful compliance. By way of a tool to help the labor-management community to observe said laws, we will periodically publish opinions which convey to you the official interpretation corresponding to their various provisions.

All the decrees provide that the employees shall be entitled to vacation leave with full pay which shall be made effective upon beginning to enjoy it. The majority of the decrees allow vacation leave, by written agreement between employer and employee, to accrue without being enjoyed for more than a year, but never for more than two years.

That is public policy regarding the vacation leave provided by these decrees. That is, that the employee is to enjoy his or her paid vacation leave upon beginning to enjoy them annually or by exception every two years.

It is in order to discourage the violation of that public policy that the decrees usually establish that the employer who does not grant any employee thereof the vacation leave to which he/she is entitled after he/she has accrued it for two (2) years, must grant him/her the total accrued thus far, paying him/her two (2) times the corresponding salary for the period in excess of said two years.

It concerns a "penalty" which is imposed on the employer for failing to abide by the rule of the decree, with respect to the days for vacation leave which accrue due to the decree.

There is nothing in law nor in the decrees which prevents an employer from granting vacation or sick leave on top of that which is provided by the applicable decree. In these cases, the employer is the one who shall establish the criteria for the accrual, enjoyment and payment thereof, without, clearly, having to comply with the criteria of the decree therefor. In fact, it could establish different, lesser or greater criteria for its accrual, enjoyment and payment than those in the decree.

Although they are not rights from the decree, this is a question of contractual rights whose parameters are the noninfraction or reduction of the rights from the decree. By virtue of an individual job contract or a collective bargaining agreement, an employer may grant more benefits than a mandatory decree, but never fewer. See Labor Relations Board vs. Vigilante, Inc., 1990, 90 JTS 30.

It should be clear, nevertheless, that as to the vacation days established by the decrees, which have been accruing for more than two years, what the decrees require is for the employer be granted it, that is, that he/she be permitted to enjoy them and he or she be paid double, unless a decree otherwise provides. As a general rule, the requirement of the decree is not complied with by merely paying him/her double, one must allow the enjoyment of the leave with pay.

This right to vacation leave with pay which is established by the decrees may not be waived, according to Section 18 of Act No. 96 itself, of June 26, 1956, 29 LPRA 245. As an exception the mandatory decrees usually provide that waiver of the actual enjoyment of vacation leave in exchange for money shall be unlawful and invalid. Some allow it as long as the worker is in agreement and authorization is obtained therefor from the Department of Labor and Human Resources.

Violation of this rule shall cause the payment to be unlawful and invalid. Therefore, it could not be raised as a defense by the employer. The employee in these cases shall be entitled not only to the enjoyment of vacation leave but also to payment therefor. This is so, moreover, because of the fact that as a general rule this right to vacation leave consists of both things, *enjoyment and payment of the leave*. To allow the employer to comply with his obligation to only authorize the employer to be absent without the corresponding pay for the days to which he or she is entitled, would make a mockery of the decree's purposes. The vacation leave created by the decrees refer to certain days on which the employee is entitled to be absent with pay. It is not the intention of the decree that his or her enjoyment be divided up, that is, the employee be allowed to be absent without pay, to be paid later on, or that he or she be paid a sum of money and then later on be allowed to be absent, but without pay. This is not the vacation leave contemplated by the mandatory decrees.

An examination of same reflects that without exception, all of them grant the right to vacation leave with pay upon beginning to enjoy it and that is the public policy which gives rise to this right, addressed at protecting the health and well-being of workers.

[Signature]
Ruy N. Delgado Zayas
Secretary of Labor and
Human Resources

United States District Court
For the District of Puerto Rico
— CERTIFIED —
To be a correct translation made
and/or submitted by the interested party
/s/ Thomas H. Kavelin
4/22/94
Certified Court Interpreter
Administrative Office of the
United States Courts

Consultation No. 12400 of the Solicitor of Labor of Puerto Rico

(Translation)

JULY 13, 1984

CONSULTATION Number 12400

We refer to your recent communication related to Mandatory Decree No. 81, in which the following situation is stated:

> "Some of your employees are entitled to twenty (20) days of Sick Leave due to Company policy. These employees have more than seven (7) years of service. If the Company grants these employees fourteen (14) consecutive days of vacation first, according to what Mandatory Decree No. 81 requires, and then grants them the other six (6) days of vacation, does the preceding violate the aforementioned Mandatory Decree?"

In this case, the employer's action does not violate what is established in Mandatory Decree No. 81 regarding the benefit of consecutive vacation days, since the worker uses them up completely and afterwards receives another six (6)-day rest period as *additional vacations granted by the employer*. The rule applies to the vacations set by the Mandatory Decree, only. The parties have the power to determine the form and manner of using the days in excess of those established by mandatory decrees.

Cordially,
(Signed)
Néstor Barbosa Vargas
Solicitor of Labor

NBV/rca

United States District Court
For the District of Puerto Rico
— CERTIFIED —
To be a correct translation prepared by
/s/ Annie Flores
Certified Court Interpreter
Administrative Office of the
United States Courts

Appendix J

(Translation)

STIPULATION OF FACTS

1. The Port Authority has always paid excess accrued vacation leave in accordance with the Collective Bargaining Agreement.

2. The Brotherhood of Office Employees (HEO, for its initials in Spanish) demands that the payment of the excess accrued leave be paid in accordance with Mandatory Decree No. 38.

3. The employees of the HEO annually accrue 30 days of vacation leave in accordance with the Collective Bargaining Agreement, while accruing 17 days through Mandatory Decree No. 38.

4. Concerning annual vacation leave, there is a similar controversy to that of sick leave. The Collective Bargaining Agreement in its Art. XXIII, Sec. 1, provides:

> "Section 1: Covered employees in the Appropriate Unit shall be entitled to accrue regular leave at the rate of two and a half (2 1/2) days for every calendar month worked."

Mandatory Decree No 38 (8th Revision 1989) provides, in part, the following:

> "All employees shall be entitled to vacation leave at full salary which shall be effective upon beginning the enjoyment thereof at the rate of one and five twelfths (1 5/12) work days for every month in which he/she has had at least one hundred (100) work hours. This vacation leave is equivalent to seventeen (17) working days per year.

The employee shall enjoy the vacation leave consecutively, provided that at the written request of the employee and by mutual agreement it may be divided into periods of no less than five (5) consecutive days and shall be granted annually or semi-annually in such wise that they do interrupt the normal functioning of the company, to which end the employer shall appropriately stagger the turns. The employee may not demand the enjoyment of his/her vacation leave until he/she has accrued it. The enjoyment of vacation leave is considered as time worked.

By written agreement between employer and employee, vacation leave may be accrued over more than one year, but never for more than two.

The employer who does not grant any employee thereof the vacation leave to which he/she is entitled after he/she has accrued it for two (2) years, must grant him/her the total accrued thus far, by paying him/her two (2) times the corresponding salary for the period in excess of said two years."

5. For years the Authority has paid excess accrued vacation leave in accordance with the provisions of the Collective Bargaining Agreement. The HEO is now demanding that it be paid in accordance with Decree No. 38 and demands that everything accrued in excess of 26 days be paid, including the additional days provided by the Agreement.

6. As to vacation leave, the provision on two years' accrued excess pay at double time was made effective in the 8th Revision (July 6, 1989). There was no provision on any vacation pay in the former revision (1983), except that the employee stop working.

[Translator's Note: This page appears to be the third page of the document beginning on the page marked "021", rather than the one beginning on the page marked "023". This would mean that the third page of the second document is missing.]

No. 38 and demands that everything accrued in excess of 26 days, including the additional days provided by the Agreement, be paid.

7. The Authority proceeded to make a payment last December 13, 1991 corresponding to this leave. Said payment was made, alleges the Authority, in accordance with its theory on its obligation to pay. The HEO feels that said payment is erroneous, both based on the theory used, and based on the computation used. The parties reserve the right to verify and contest said amounts in accordance with their records and any Award which is forthcoming in due time.

United States District Court
For the District of Puerto Rico
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/s/ Thomas H. Kavelin
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Administrative Office of the
United States Courts

Appendix K

(Translation)

[logo] PORT AUTHORITY/COMMONWEALTH OF PUERTO RICO
COLLECTIVE BARGAINING AGREEMENT
between
PUERTO RICO PORT AUTHORITY
and
H.E.O.
PUERTO RICO BROTHERHOOD OF OFFICE AND BUSINESS WORKERS AND ASSOCIATED BRANCHES
1-1-87 TO 12-31-89

ARTICLE XXIII
REGULAR VACATION LEAVE

Section 1: Covered employees in the Appropriate Unit shall be entitled to accumulate regular leave at the rate of two and a half (2 1/2) days for every calendar month worked.

Section 2: Regular vacation leave shall accrue from the employee's first day on the job.

Section 3: The employee shall enjoy vacation leave in accordance with a program which shall be prepared for said purpose by the Authority in each Bureau, taking as a basis service needs, the non-interruption of same and employee preferences.

Section 4: All employees shall be bound to enjoy regular vacation leave for a period no less than twenty (20) days—

* * *

[four sets of initials appear in the left-hand margin of both pages of the original]

United States District Court
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4/22/94
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Administrative Office of the
United States Courts

(Translation)

COLLECTIVE BARGAINING AGREEMENT
BETWEEN
UNION OF TRANSPORTATION
EMPLOYEES OF CATAÑO
AND
PORT AUTHORITY
EFFECTIVE TERM
APRIL 1, 1987 — MARCH 31, 1990

ARTICLE XVII
VACATION LEAVE

Section 1: Regular and substitute workers shall be entitled to paid vacation leave which shall accrue on an unlimited basis at the rate of eighteen (18) working hours for every month worked up to a total of two hundred and sixteen (216) working hours per year.

Section 2: Temporary and project workers shall be entitled to paid vacation leave which shall accrue at the rate of eighteen (18) working hours for every month of work up to a total of two-hundred and sixteen (216) working hours per year, as long as they work for a minimum of one hundred and forty (140) regular hours per calendar month.

Section 3: Regular workers are entitled to enjoy their vacation leave in accordance with a program which is to be established by the Authority, in which seniority and services needs must be taken into account. To that end applications for regular leave shall be submitted no fewer than fifteen (15) working days in advance of the date said leave begins.

[Five sets of initials appear in the left-hand margin of each page of the original.]

United States District Court
For the District of Puerto Rico
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